

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:	:	Chapter 11
	:	
ARK LABORATORY, LLC,	:	Case No. 23-43403
	:	
Debtor.	:	Hon. Maria L. Oxholm
	:	

**APPLICATION FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE PRIORITY CLAIMS PURSUANT TO 11 U.S.C. § 503**

Fisher Healthcare, a division of Fisher Scientific (“**Fisher**”), by and through its undersigned counsel, files this Application for Allowance and Payment of Administrative Expense Priority Claims Pursuant to 11 U.S.C. § 503 (the “**Application**”), in the amount of \$32,286.04. In support of this request, Fisher relies upon and incorporates its Brief in Support, which is attached to this Application as **Exhibit 3**.

WHEREAS, Fisher Healthcare, a division of Fisher Scientific, respectfully requests that this Honorable Court enter an Order (i) granting an allowed administrative expense priority claim in the amount of \$32,286.04, (ii) directing the Debtor to remit payment of the allowed administrative expense priority claim in the amount of \$32,286.04 to Fisher within 10 days of the date of this Order, and (iii) granting such other and further relief as the Court deems just and proper.

Dated: December 15, 2023

TUCKER ARENSBERG, P.C.

/s/ Maribeth Thomas
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:	:	Chapter 11
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ARK LABORATORY, LLC,	:	Case No. 23-43403
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Exhibits

Exhibit 1:	Proposed Order
Exhibit 2:	Notice of Application
Exhibit 3:	Brief in Support
Exhibit 4:	Certificate of Service
Exhibit 5:	Affidavits (N/A)
Exhibit 6:	Calculation of Claim

**EXHIBIT 1
PROPOSED ORDER**

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:	:	Chapter 11
	:	
ARK LABORATORY, LLC,	:	Case No. 23-43403
	:	
Debtor.	:	Hon. Maria L. Oxholm
	:	

**ORDER GRANTING APPLICATION FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE PRIORITY CLAIMS PURSUANT TO 11 U.S.C. § 503**

Upon consideration of Fisher Healthcare, a division of Fisher Scientific's Application for Allowance and Payment of Administrative Expense Priority Claims Pursuant to 11 U.S.C. § 503 (the "**Application**"); and this Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being authorized to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Application being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Application has been given under the particular circumstances; and it appearing that no other or further notice is necessary; and the Court having considered the Application, and any responses thereto, and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The relief requested in the Application is **GRANTED**.

2. Pursuant to section 503(b) of the Bankruptcy Code, Fisher Healthcare is granted an allowed administrative expense priority claim against the Debtor, Ark Laboratory, LLC, in the amount of \$32,286.04 (the “**Administrative Claim**”).

3. The Administrative Claim shall be paid in full to Fisher within 10 days of the date of this Order.

4. This Court shall retain jurisdiction with respect to the implementation, interpretation and/or enforcement of this Order.

EXHIBIT 2
NOTICE OF APPLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:	:	Chapter 11
	:	
ARK LABORATORY, LLC,	:	Case No. 23-43403
	:	
Debtor.	:	Hon. Maria L. Oxholm
	:	

**NOTICE AND OPPORTUNITY FOR HEARING REGARDING
FISHER HEALTHCARE, A DIVISION OF FISHER SCIENTIFIC'S
APPLICATION FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE PRIORITY CLAIMS PURSUANT TO 11 U.S.C. § 503**

Please take notice that Fisher Healthcare, a division of Fisher Scientific's Application for Allowance and Payment of Administrative Expense Priority Claims Pursuant to 11 U.S.C. § 503 (the "**Application**") was filed with the Bankruptcy Court in the above-captioned case on December 15, 2023.

A copy of the Application will be on file and available for review with the Clerk of the U.S. Bankruptcy Court, 211 W. Fort Street, Suite 2100, Detroit, Michigan 48226, and may be viewed on the Court's ECF/PACER System.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant relief sought in the motion, or if you want the Court to consider your views on the motion, within 14 days you or your attorney must:

1. File with the Court a written response or an answer, explaining your position at:¹

U.S. Bankruptcy Court
211 W. Fort Street, Suite 2100
Detroit, Michigan 48226

If you mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the 14-day period stated above expires. **All attorneys are required to file pleadings electronically.**

¹ Any response or answer must comply with Fed. R. Civ. Pro. 8(b), (c), and (e).

You must also mail a copy to:

Maribeth Thomas, Esq.
TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
mthomas@tuckerlaw.com

2. If a response or answer is timely filed and served, the Clerk will schedule a hearing on the motion, and you will be served with a notice of the date, time and location of the hearing. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated: December 15, 2023

/s/ Maribeth Thomas
Maribeth Thomas, Esq.
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*Counsel to Fisher Healthcare, a division of
Fisher Scientific*

**EXHIBIT 3
BRIEF IN SUPPORT**

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:	:	Chapter 11
	:	
ARK LABORATORY, LLC,	:	Case No. 23-43403
	:	
Debtor.	:	Hon. Maria L. Oxholm
	:	

**BRIEF IN SUPPORT OF APPLICATION FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE PRIORITY CLAIMS PURSUANT TO 11 U.S.C. § 503**

Fisher Healthcare, a division of Fisher Scientific (“**Fisher**”) files this Brief in Support of Motion for Allowance and Payment of Administrative Expense Priority Claims Pursuant to 11 U.S.C. § 503 (the “**Application**”), and in support thereof, states as follows.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. The relief requested in the Application is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue in the Eastern District of Michigan is appropriate under 28 U.S.C. §§ 1408 and 1409.
4. The relief sought in the Application is authorized by section 503(b) of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”), and Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule(s)**”)

BACKGROUND

5. On April 12, 2023 (the “**Petition Date**”), Debtor Ark Laboratory, LLC a/k/a Helix Diagnostics (the “**Debtor**”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code before this Court at Case No. 23-43403 (the “**Bankruptcy Case**”).

6. To and through the Petition Date, Fisher delivered certain products and/or services (collectively, the “**Goods**”) to the Debtor pursuant to certain contracts (the “**Contracts**”).

7. Fisher continued to provide Goods to the Debtor subsequent to the Petition Date.

8. On August 21, 2023, Fisher filed Proof of Claim 80, asserting an unsecured claim in the amount of \$62,030.93, representing the unpaid balance owed with respect to the Goods provided by Fisher to the Debtor prior to the Petition Date.

9. During the 20 days prior to the Petition Date, the Debtor purchased and received from Fisher a total of \$20,954.63 in Goods pursuant to the Contracts entitled to an administrative claim pursuant to 11 U.S.C. § 503(b)(9) as Goods that were purchased and received by the Debtor from Fisher during the 20 days prior to the Petition Date.

10. After the Petition Date, the Debtor purchased and received from Fisher a total of \$11,331.41 in Goods.

11. The total claim of Fisher entitled to priority under section 503(b) of the Bankruptcy Code equals \$32,286.04. A breakdown of the Goods received and the amounts entitled to administrative claim priority under section 503(b) of the Bankruptcy Code is attached hereto and incorporated herein as **Exhibit 6**.

BASIS FOR REQUESTED RELIEF

A. 503(b)(9) Claim

12. Pursuant to section 503(b)(9) of the Bankruptcy Code, after notice and a hearing, “there shall be allowed, administrative expenses, . . . including . . . (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

13. “Goods,” for purposes of section 503(b)(9), is not defined in the Bankruptcy Code; however, this Court has utilized the definition set forth in Article 2-105(1) of the Uniform Commercial Code (the “UCC”), which defines “goods” as “all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action.” UCC § 2-105(1).

14. In the 20 days prior to the filing of this Bankruptcy Case, Fisher supplied the Debtor, in the ordinary course of business between the Debtor and Thermo Fisher, with a total of \$20,954.63 in Goods, which are entitled to priority under section 503(b)(9) of the Bankruptcy Code.

15. As of the date of the Application, Fisher has not received any payment with respect to such Goods.

B. 503(b)(1) Claim

16. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, a creditor is entitled to a priority administrative expense claim for “the actual, necessary costs and expenses of

preserving the estate, including . . . wages for services rendered after the commencement of the case.” 11 U.S.C. § 503(b)(1).

17. “Where a debtor-in-possession induces a creditor to continue performing under an unassumed pre-petition executory contract, pending a decision to assume or reject, the creditor is entitled to administrative priority to the extent that the goods or services supporting the claim were provided post-petition and were beneficial to the estate.” *In re Collins & Aikman Corp.*, 384 B.R. 751, 763 (Bankr. E.D. Mich. 2008).

18. A total of \$11,331.41 in Goods were supplied to the Debtor, in the ordinary course of business between the Debtor and Fisher, post-petition.

NO PRIOR REQUEST

19. No prior request for the relief sought in Application has been made to this Court or any other Court.

WHEREAS, Fisher Healthcare, a division of Fisher Scientific, respectfully requests that this Honorable Court enter an Order (i) granting an allowed administrative expense priority claim in the amount of \$32,286.04, (ii) directing the Debtor to remit payment of the allowed administrative expense priority claim in the amount of \$32,286.04 to Fisher within 10 days of the date of this Order, and (iii) granting such other relief as the Court deems just and proper.

Dated: December 15, 2023

Respectfully submitted,

TUCKER ARENSBERG, P.C.

/s/ Maribeth Thomas

Maribeth Thomas, Esquire

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*Counsel for Fisher Healthcare, a division of
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EXHIBIT 4
CERTIFICATE OF SERVICE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:	:	Chapter 11
ARK LABORATORY, LLC,	:	Case No. 23-43403
Debtor.	:	Hon. Maria L. Oxholm
	:	

CERTIFICATE OF SERVICE

I, Maribeth Thomas, hereby certify that, on the 15th day of December, 2023, I served or caused to be served a true and correct copy of Fisher Healthcare, a division of Fisher Scientific's Application for Allowance and Payment of Administrative Expense Priority Claims Pursuant to 11 U.S.C. § 503 upon all parties in interest via the Court's CM/ECF electronic notification system.

Dated: December 15, 2023

/s/ Maribeth Thomas
Maribeth Thomas, Esq.
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(412) 566-1212
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*Counsel to Fisher Healthcare, a division of
Fisher Scientific*

EXHIBIT 5
AFFIDAVITS (N/A)

**EXHIBIT 6
CALCULATION OF CLAIM**

**Itemization of 503(b)(9) and 503(b)(1)
Administrative Expense Priority Claims**

ADMINISTRATIVE EXPENSE CLAIM (503(B)(9))				
Invoice Number	Invoice Amount	Invoice Balance	Invoice Date	Due Date
1547870	\$5,715.58	\$5,715.58	3/23/2023	4/22/2023
1547871	\$3,089.96	\$3,089.96	3/23/2023	4/22/2023
1827265	\$745.21	\$745.21	4/3/2023	5/3/2023
1827266	\$10,515.20	\$10,515.20	4/3/2023	5/3/2023
1863517	\$219.42	\$219.42	4/4/2023	5/4/2023
2088904	\$669.26	\$669.26	4/12/2023	5/12/2023
SUBTOTAL 503(B)(9) CLAIM		\$20,954.63		
POST-PETITION 503(B)(1) CLAIM		\$11,331.41		
TOTAL		\$32,286.04		